

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERIKA LYNN FRAME  
2224-B Almaden Road  
San Jose, CA 95125

Registered Nurse License No. 498911  
Public Health Nurse Certificate No. 52212

Respondent.

Case No. 2012-430

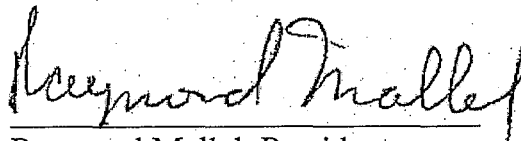
OAH No. 2012030354

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on December 19, 2012.

IT IS SO ORDERED this 19th day of November, 2012.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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Public Health Nurse Certificate No. 52212

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Case No. 2012-430

OAH No. 2012030354

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 18, 2012.

Deputy Attorney General Char Sachson represented Complainant Louise R. Bailey, M.Ed., RN.

Respondent Erika Lynn Frame represented herself.

The record closed on July 18, 2012.

**FACTUAL FINDINGS**

1. Complainant Louise R. Bailey, M.Ed., RN, filed the Accusation in her official capacity as Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs.
2. The Board issued Registered Nurse License No. 498911 to Erika Lynn Frame (Respondent) on March 31, 1994. The license expired on June 30, 2011, and has not been renewed.
3. The Board issued Public Health Nurse Certificate No. 52212 to Respondent on August 9, 1994. The certificate expired on June 30, 2011, and has not been renewed.
4. The standard of proof applied in making the factual findings is clear and convincing evidence.

*Unprofessional conduct – criminal conviction*

5. On March 23, 2011, in the Santa Clara County Superior Court, Respondent was convicted by her plea of nolo contendere of a misdemeanor violation of Penal Code section 242-243, subdivision (d), battery with serious bodily injury. Respondent was placed on court probation for two years, pursuant to conditions that included completing an anger management program and 40 hours volunteer work.

6. On July 13, 2011, Respondent presented proof of completion of the anger management course and the 40 hours of volunteer work, and her term of probation was changed so that it was scheduled to terminate on November 16, 2012.

7. The incident that led to Respondent's conviction occurred on October 8, 2010. Respondent assaulted her roommate, who suffered a broken finger. The two had been arguing about the mailbox key and a mail-order delivery of Ambien. Respondent followed her roommate into a bedroom and in an attempt to take the key, jumped on her roommate, and injured her.

8. Respondent admitted the assault to an investigating police officer, although she told him she did not recall exactly what occurred, and did not think sufficient force was employed to result in a broken finger. At hearing, Respondent also admitted the assault, although she also stated that there were mitigating circumstances surrounding her argument with her roommate.

*Mental illness affecting competency*

9. Business and Professions Code section 820 provides that the Board may order a licensee to undergo a psychological evaluation whenever it appears that the licensee may be unable to practice safely "due to mental illness or physical illness affecting competency." Pursuant to this provision, Respondent was evaluated by clinical psychologist Thomas H. McCord, Ph.D.

10. Dr. McCord received a doctorate in clinical psychology in 1982 from the California School of Professional Psychology. He has been in private practice since 1985. Dr. McCord is highly experienced in conducting psychological assessments and estimates that he has completed approximately 3600 evaluations in his career. The evaluations have been pursuant to requests from various state and local agencies, as well as for family court services.

11. Dr. McCord was advised that Respondent's referral was due to the assault on her roommate, and also a history of multiple suicide attempts. He was asked to look at the actions underlying the conviction, her overall suitability to work as a nurse, and also whether she exhibited anti-social personality features. Dr. McCord administered a clinical interview (3.5 hours), the MMPI-2, and the Rorschach Inkblot Test. He also reviewed the medical

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notes from a hospitalization on October 5 through 8, 2010, and police department records. He authored a report dated April 26, 2012, and testified at hearing.

12. Dr. McCord opined that Respondent is not currently safe to practice as a registered nurse. In his report, he wrote:

She simply lacks the coping skills, stability, and management of her impulses to perform such a stressful task. It is neither in her interest nor in the interest of medical patients that she be in a position requiring so much stress tolerance. Stability, maturity, and responsibility of such clinical positions exceed her capacity.

Underlying Dr. McCord's opinion is his diagnoses of Respondent, made pursuant to Diagnostic and Statistics Manual IV criteria. His diagnoses were: somatization disorder, dysthymic disorder, and alcohol, cannabis, and Ambien dependency (Axis I); histrionic personality disorder with antisocial, dysthymic and borderline features (Axis II); history of breast cancer (Axis III); and fixed disability income, intermittent unemployment, suspension of her RN license and personal indebtedness (Axis IV).

Noteworthy aspects in Respondent's history include that she has had difficulty maintaining steady employment and tends to blame others for her mistakes. Respondent has a long history of substance abuse and been in and out of recovery programs since 1997. And immediately preceding her assault on her roommate, Respondent was hospitalized following a suicide attempt.

On the positive side, however, Dr. McCord found Respondent to be easy to like with an agreeable and pleasant persona. He noted that she has participated in a 12-step program and has only relapsed once in the last four years. It appears that Respondent is now receiving consistent medical treatment for her mood disorders, including appropriate medication. Respondent reported to Dr. McCord that she was taking daily: Effexor 300 mg, Lamictal 350 mg, and Prozac 20 mg, as well as Trazadone 50 mg (also an anti-depressant) as needed for sleep. Dr. McCord opined, however, that these facts are insufficient to support her safe practice at this time, and her prognosis is poor. He would not recommend a reinstatement of licensure without a thorough psychological examination.

13. Dr. McCord's evaluation of Respondent was thorough and his opinions persuasive.

14. Respondent presented medical records from Kaiser Permanente that were not available to Dr. McCord. They indicate diagnoses of depression, major, recurrent; bulimia nervosa; alcohol and cannabis dependence in remission; and borderline personality disorder. She has been prescribed Lamictal (often prescribed for bipolar disorder) and various anti-depressant medications in the past.

*Respondent's evidence*

15. Respondent testified that she allowed her license to expire and does not want to practice nursing at this time. She also stated that she does not want to work in any high stress environment, including an emergency room or in a hospital. But she wants to retain her license "as a back up" in part because she worked very hard to obtain it. And, she feels that she is safe to work in some areas where her license would be required, such as in a case management position or administering flu shots.

16. Respondent evidences a great deal of insight about her situation and was very forthcoming in her testimony. She told about her history of struggling with family problems growing up, alcohol and marijuana use and other problems over the years. She explained that it has taken a long time to learn about what she needs given her psychological problems. They include borderline personality disorder, premenstrual problems, depression, substance abuse, and bulimia. Respondent has placed herself in treatment many times and also left many nursing positions not just because of stress, but because of caring about the patients.

17. Respondent is now starting her seventh session of "Power," a 12-step program for women that addresses substance abuse and other issues. She believes that Power has helped her learn a lot and be accountable for her actions, and has provided her a way to help others. Respondent described the battery as an isolated incident. She asserts that she learned a great deal from the anger management class, and from the volunteer work that she performed. She was also ordered to pay \$6,000 in restitution, and has paid it in full.

18. Christina Hall is sponsored by Respondent in the Power program. They began this mentoring relationship in January 2012. Hall described Power as an 18-week program that teaches participants to learn about themselves and to form relationships with other women, and provides the tools to change. Core values are sobriety, accountability, responsibility, and dependability. It is required that participants be on time, and remain sober. A counselor is seen once each week.

Respondent has been a considerate and dedicated sponsor. Respondent makes timely telephone calls to Hall, and "keeps an eye on" her.

19. Marilyn Osterlund, MFT, has been working with Respondent weekly since April 2009. In a letter dated July 15, 2012, Osterlund states that she has "seen good progress with [Respondent] as she is learning to handle her interactions with other people in a more healthy way. She also is learning to control her anger tendencies and channel her energy productively."

20. Lee Lani Clark has known Respondent for approximately four years. She has been Respondent's sponsor since 2009. In a letter dated July 6, 2012, Clark wrote that Respondent has been active in her sobriety by attending AA meetings, has completed the 12 steps, and has sponsored other women. She also wrote that Respondent is a kind and loving person, who is very honest and forthright.

### *Costs*

21. Complainant's prayer includes a request that Respondent be ordered to pay the Board the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3; however, no evidence of costs was presented.

### LEGAL CONCLUSIONS

1. Cause for license discipline exists pursuant to Business and Professions Code sections 490 and 2761, subdivision (f), (substantially related criminal conviction) by reason of the matters set forth in Finding 5.

2. Business and Professions Code section 822 provides that when it has been established that a licensee cannot practice safely due to a mental or physical impairment, the licensing agency may revoke or suspend the license, place it on probation, or take any other proper action. Cause for such action was established by the matters set forth in Findings 9 through 14.

3. As cause for license discipline was established, the appropriate level must be determined. The Board's disciplinary guidelines (Cal. Code Regs., tit. 16, § 1444.5) provide that revocation is the recommended discipline for a criminal conviction. And where a nurse is unable to practice safely due to mental illness, the guidelines recommend suspension or revocation. Nonetheless, it is also required that the following factors be considered:

- a. Nature and severity of the acts, offenses, or crimes.
- b. Actual or potential harm to the public.
- c. Actual or potential harm to any patient.
- d. Prior disciplinary record.
- e. Number and/or variety of current violations.
- f. Mitigation evidence.
- g. Rehabilitation evidence.
- h. In the case of a criminal conviction, compliance with conditions of sentence and probation.
- i. Overall criminal record.
- j. Passage of time since the offense occurred.
- k. Evidence of expungement pursuant to Penal Code section 1203.4.

4. Before the Board is a nurse with a long history of substance abuse and mental health problems. Over the years, Respondent has abused alcohol and marijuana, and is currently on probation for assaulting her roommate. Respondent is compliance with the criminal case orders, but is still on probation. A psychologist has persuasively opined that she is not safe to practice nursing. Respondent was very forthcoming about her struggles, and appears to have a good grasp on what it is required to recover and cope with her mental

health issues. But even Respondent acknowledges that she would not be safe to practice nursing in certain environments at this time. It is therefore determined that the public interest requires that her nursing license and public health certificate be revoked. She will be welcome to petition for reinstatement when she is able to demonstrate that she can safely work as a nurse.

5. Business and Professions Code section 125.3 provides that:

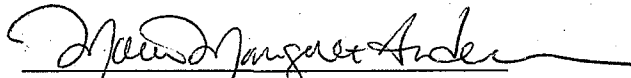
... the Board may request an administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Complainant did not submit evidence of the costs incurred in the investigation and enforcement of this case. Accordingly, no cost order will be made.

#### ORDER

1. Registered Nurse License Number 498911, issued to Respondent Erika Lynn Frame, is revoked.
2. Public Health Nurse Certificate Number 52212, issued to Respondent Erika Lynn Frame, is revoked.

DATED: August 30, 2012

  
MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

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BOARD OF  
REGISTERED NURSING  
SACRAMENTO

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*Attorneys for Complainant*

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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation  
12 Against:

13 **ERIKA LYNN FRAME**  
14 **2224-B Almaden Road**  
15 **San Jose, CA 95125**

16 **Registered Nurse License No. 498911**  
17 **Public Health Nurse Certificate No. 52212**

18 Respondent.

Case No. 2012-430

OAH No. 2012030354

19 **FIRST AMENDED ACCUSATION**

20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation  
23 solely in her official capacity as the Interim Executive Officer of the Board of Registered  
24 Nursing, Department of Consumer Affairs.

25 2. On or about March 31, 1994, the Board of Registered Nursing issued Registered  
26 Nurse License Number 498911 to Erika Lynn Frame (Respondent). The Registered Nurse  
27 License expired on June 30, 2011, and has not been renewed.

28 3. On or about August 9, 1994, the Board of Registered Nursing issued Public Health  
Nurse Certificate Number 52212 to Erika Lynn Frame (Respondent). The Public Health Nurse  
Certificate expired on June 30, 2011, and has not been renewed.



## JURISDICTION

4. This First Amended Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

..."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

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1 convicted by her plea of nolo contendere of violating Penal Code section 242/243(d) (battery  
2 involving serious bodily injury). Respondent was sentenced to probation for two years, and  
3 ordered to perform 40 hours of community service and attend anger management classes. The  
4 circumstances of the conviction are that on or about October 8, 2010, Respondent assaulted her  
5 roommate and broke her roommate's finger.

6 SECOND CAUSE FOR DISCIPLINE  
7 (MENTAL ILLNESS AFFECTING COMPETENCY)

8 14. Respondent has subjected her license to discipline under Business and Professions  
9 Code section 822 which provides that a license may be revoked or suspended, inter alia, if a  
10 licensing agency determines that its licensee's ability to practice his or her profession safely is  
11 impaired because the licensee is mentally or physically ill. Respondent was examined pursuant  
12 to Business and Professions Code section 820, which provides that the Board may order a  
13 licensee to be examined by one or more physicians and surgeons or psychologists designated by  
14 the agency, whenever it appears that a person holding a license, certificate or permit may be  
15 unable to practice his or her profession safely because the licensee's ability to practice is  
16 impaired due to mental illness or physical illness affecting competency. Respondent was  
17 examined pursuant to section 820 in April 2012 by a psychologist. As a result of said  
18 examination, the psychologist concluded that Respondent's current mental status is one of  
19 variable emotional stability, poor coping skills, characterologically inappropriate behavior that is  
20 chronic, and an incapacity to accept responsibility for this. The psychologist further concluded  
21 that Respondent has drug and alcohol dependency and has participated in 12-step meetings, and  
22 that she lacks the coping skills, stability, and management of her impulses to perform the tasks  
23 involved in working as a registered nurse.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking or suspending Registered Nurse License Number 498911, issued to Erika  
28 Lynn Frame;

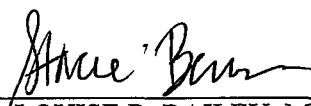
1           2.     Revoking or suspending Public Health Nurse Certificate Number 52212, issued to  
2 Erika Lynn Frame;

3           3.     Ordering Erika Lynn Frame to pay the Board of Registered Nursing the reasonable  
4 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
5 Code section 125.3;

6           4.     Taking such other and further action as deemed necessary and proper.  
7  
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9  
10 DATED:

June 19, 2012

  
for LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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